

For: State and County Offices

DCP Contracts on Farms Having 10 or Less Base Acres

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

The Food, Conservation, and Energy Act of 2008 (the 2008 Act) was enacted on June 18, 2008. The 2008 Act, Section 1101(d) provides that a producer on a farm may **not** receive direct payments, counter-cyclical payments, or average crop revenue election payments if the sum of the base acres of covered commodities and peanuts on the farm is 10 acres or less.

This provision does **not** apply if a farm is owned by either of the following:

- socially disadvantaged (SDA) farmer or rancher
- limited resource (LR) farmer or rancher.

A notice to 73 FR 36839 was published on June 30, 2008, about the 2008 Act. In part, the notice provides the following:

“A producer on a farm may not receive DCP payments if the sum of the base acres of covered commodities and peanuts on the farm is 10 acres or less. However, such prohibition does not apply to a farm that is wholly owned by socially disadvantaged or limited resource farmers or ranchers, as provided by Section 1101 of the 2008 Farm Bill. If the farm is owned by a legal entity, such as a corporation, each shareholder, partner, or member of the entity must be a socially disadvantaged or limited resource farmer or rancher.”

State and County Offices have raised questions about action on CCC-509’s for farms that have 10 or less base acres of covered commodities and peanuts and do not meet either of the 2 exceptions listed.

Disposal Date	Distribution
July 1, 2009	State Offices; State Offices relay to County Offices

Notice DCP-191

1 Overview

B Purpose

This notice provides guidance to State and County Offices on CCC-509's with 10 or less base acres of covered commodities and peanuts.

2 CCC-509 and Appeal Rights

A Farms with 10 or Less Base Acres of Covered Commodities and Peanuts and the Owner is Not Seeking an Exception as a SDA or LR Farmer or Rancher

Producers may enroll farms having less than 10 acres of base of covered commodities and peanuts. Provided all other eligibility provisions have been met, CCC-509 can be approved for a farm having 10 or less base acres of covered commodities and peanuts. However, Section 1101(d) of the 2008 Act prohibits payment to producers on those farms. Therefore, in such an instance, payment under the approved CCC-509 must be denied.

Note: Software will prevent issuing payments to farms that have 10 or less base acres.

If a farm having 10 or less base acres of covered commodities is enrolled and the owners on the farm are **not** seeking an exception under the SDA/LR provisions, and all other contract eligibility provisions have been met, COC or CED, under a delegation of authority shall:

- approve CCC-509

Note: 1-DCP, subparagraph 6 B, provides that, in routine cases, COC may redelegate authority to approve CCC-505's and CCC-509's to CED. Redelegations of authority to sign for COC shall be in writing. Delegations of authority are maintained according to 25-AS procedures under file code "GA-2".

- issue producers with shares on CCC-509 a letter advising that payments will **not** be issued on the farm; see Exhibits 1 and 2.

Notes: Exhibit 1 is an example of a COC employee, such as CED, that has made the adverse decision that payments will not be issued on the farm.

Exhibit 2 is an example of a COC decision of an adverse decision that payments will not be issued on the farm.

See 1-APP for additional appeals guidance on adverse determination letters.

Notice DCP-191

2 CCC-509 and Appeal Rights (Continued)

B Identifying SDA/LR Farmers and Ranchers

State and County Offices should **not** provide guidance to an owner about either of the following:

- their inclusion in a SDA/LR group
- propriety of the owner seeking an exception.

If an owner wants to certify that the owner is in a SDA/LR group, then that owner shall be provided with CCC-509 Appendix (6-20-08) and be allowed to make that certification.

3 Action

A State Office Action

State Offices shall provide guidance to County Offices about:

- CCC-509's that are approved but will have payments denied because the farm has 10 or less base acres of covered commodities and peanuts
- owner certifications of SDA/LR farmers and ranchers.

B County Office Action

County Offices shall follow this notice when:

- notifying producers that payments are denied because a farm has 10 or less base acres of covered commodities and peanuts and the owner is not a SDA/LR farmer or rancher
- owners certify that they are a SDA/LR farmer or rancher.

Example of Initial Adverse Decision Letter from COC Employee (CED or other CO Employee)

The following letter is for illustration purposes only.

EXAMPLE 1, COC Employee (CED or other CO Employee)

Mr. Bill Carson
 3 Kansas Settlement Road
 Dos Cabezos, AZ 12345

Date
 Farm Number:

Dear Mr. Carson:

This letter concerns your recent enrollment of this farm in the 2008 Direct and Counter-Cyclical Program (DCP).

Your 2008 DCP Contract has been approved. However, Section 1101 of the Food, Conservation, and Energy Act of 2008 provides that payments are not authorized to producers on a farm having 10 or less base acres of covered commodities and peanuts.

My review shows that this enrolled farm has 10 or less base acres of covered commodities and peanuts. Accordingly, DCP payments will not be issued to producers on this farm.

If you believe I have not properly reviewed this farm's records in determining that the farm has 10 or less base acres of covered commodities and peanuts, you may appeal this determination to the county committee by filing a written request no later than 30 days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the county committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you appeal this determination to the county committee, you may later appeal any adverse determination of the county committee to the FSA State committee or the National Appeals Division. To appeal, write to the county committee at the following address and explain why you believe this determination is erroneous.

Somewhere County FSA Committee
 55 Main Street
 Somewhereville, OH 12346

If you do not timely file an appeal of this determination, this shall be the final administrative determination with respect to this matter in accordance with regulations at 7 CFR Part 780.

Sincerely,

Nicole Farmer
 County Executive Director

Example of Initial Adverse Decision Letter from COC

The following letter is for illustration purposes only.

EXAMPLE 2, COC Determination

Ms. Amelia E. Hart
RR 3 Box 20
Bryan, TX 67890

Date
Farm Number:

Dear Ms. Hart:

This letter concerns your recent enrollment of this farm in the 2008 Direct and Counter-Cyclical Program (DCP).

Your 2008 DCP Contract has been approved. However, Section 1101 of the Food, Conservation, and Energy Act of 2008 provides that payments are not authorized to producers on a farm having 10 or less base acres of covered commodities and peanuts.

Our review shows that this enrolled farm has 10 or less base acres of covered commodities and peanuts. Accordingly, DCP payments will not be issued to producers on this farm

If you believe that the county committee has not properly considered the individual facts of this case, you have the following options:

Reconsideration

You may request that the county committee reconsider this determination by filing a written request no later than 30 calendar days after you receive this notice in accordance with FSA appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to the National Appeals Division. To request reconsideration, write to me at the following address and explain why you believe this determination is erroneous. The address of the county committee is:

(Insert applicable address.)

Alternative Dispute Resolution (ADR)

Mediation is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the State FSA State Executive Director at the following address:

(Insert applicable address.)

In the alternative, you may seek another form of ADR.

Example 2 Continued on Next Page

Example of Initial Adverse Decision Letter from COC (Continued)**Example 2, COC Determination (Continued)**Appeal to STC

You may appeal the County Committee's determination to the State Committee by filing a written request no later than 30 calendar days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the State Committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to appeal to the State Committee, you may later appeal the determination of the State Committee to NAD. If you appeal an initial decision of a County Committee to the State Committee, you waive your right to reconsideration by the County Committee of that decision. To appeal, write to the State Committee at the following address and explain why you believe this determination is wrong.

(Insert applicable STC address.)

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter.

(Insert applicable NAD address.)

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

Jon Rodriguez
County Executive Director

Attachment